IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 4 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 Yes
2 to 5 No

COMMISSIONER OF INCOME TAX

Versus

TANVI SAJNI FAMILY TRUST

Appearance:
MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.R.DAVE

Date of decision: 09/08/2000

ORAL JUDGEMENT

(per R.K. Abichandani, J.)

The Income Tax Appellate Tribunal, Ahmedabad Bench 'B', has referred the following questions for the opinion of this Court under sec. 256(1) of the Income-tax Act, 1961.

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has not erred in law and on facts in holding that the assessee trust is a non-discretionary trust and the income is liable to be allocated amongst the beneficiaries for the purpose of taxing the same in their hands?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has not erred in law and on facts in deleting the interest of Rs. 18,676/- charged under section 217 of the Income-tax Act, 1961?

2. When this reference is called out for hearing, it is pointed out that in case of this very assessee these questions are already decided by this Court in C.I.T. v. Tanvi Sajni Family Trust reported in 209 ITR 497 for the Assessment Year 1975-76. The present reference relates to Assessment Year 1980-81. In the said decision it was held that under the Trust Deed the shares of the beneficiaries were determinate and that the provisions of sec. 164 of the Income-tax Act did not apply in the instant case. It was held that the Tribunal was right in holding that the trust was entitled to deduction of interest paid to beneficiaries on the income from the trust which was kept by the beneficiaries as a loan.

3. Following the said decision, we answer both the questions referred to us in the affirmative, against the revenue and in favour of the assessee.

4. The reference stands disposed of accordingly with no order as to costs.

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(R.K. Abichandani, J.)

(A.R. Dave, J.)

(hn)